

GOVERNMENT OF ANDHRA PRADESH

ABSTRACT

Medical and Health Department – Order of the Honourable Supreme Court of India in Criminal Appeal Nos.144-145 of 2004 dated.05-08-2005 – Booking of cases against Doctors for criminal rashness or negligence of duties under section 304-A Indian Penal Code, 1860 – Certain instructions – Issued.

HEALTH, MEDICAL AND FAMILY WELFARE (VC.II.2) DEPARTMENT

G.O.Ms.No.323

Dated: 02-09-2008

Read the following:

1. Order of the Honourable Supreme Court of India dated.05.08.2005 in Criminal Appeal Nos.144-145 of 2004.
2. From the Commissioner, Andhra Pradesh Vaidya Vidhana Parishad, Hyderabad letter Rc.No.0085/Commr.Peshi/2006, dated.18.08.2006.

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ORDER:

The Honourable Supreme Court of India in the order first read above, while dealing with the Criminal Appeals filed against a medical practitioner alleging criminal rashness and negligence resulting in death of a patient, has held that a medical practitioner cannot be proceeded against under section 304-A of the Indian Penal Code, 1860 for criminal rashness and negligence, unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.

2. Of late, some incidents have been reported in the State of Andhra Pradesh where the relatives of the patients who die while undergoing treatment filing criminal cases against the doctors who treated the patients under section 304-A Indian Penal Code, 1860.

3. Government after careful examination of the issue in the light of the ruling of the Honourable Supreme Court of India, the observations made therein and the guidelines proposed in the order first read above, hereby issue the following guidelines for compliance:

GUIDELINES:

- 1) A private complaint may not be entertained unless the complainant has produced prima facie evidence before the Court in the form of a credible opinion given by another competent doctor to support the charge of rashness or negligence on the part of the accused doctor.
- 2) The investigating officer should before proceeding against the doctor accused of rash and negligent act or omission, obtain an independent and competent medical opinion preferably from a doctor in Government service qualified in that branch of medical practice who can normally be expected to give an impartial and unbiased opinion applying Bolam's test to the facts collected in the investigation.
- 3) A doctor accused of rashness or negligence may not be arrested in a routine manner (simply because a charge has been leveled against him).

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- 4) Unless his arrest is necessary for furthering the investigation or for collecting evidence or unless investigation officer feels that the doctor proceeded against would not make himself available to face the prosecution unless arrested, the arrest may be withheld.

All the Commissioners of Police, Superintendents of Police and Station House Officers in the State of Andhra Pradesh are requested to follow the above guidelines scrupulously.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

**DR. VIJAY KUMAR
EX-OFFICIO SECRETARY TO GOVERNMENT**

To

All Commissioners of Police in the State.

All Superintendents of Police in the State.

All Station House Officers in the State

(through Commissioner of Police/Superintendent of Police concerned).

The Medical Council of India, New Delhi.

The Indian Medical Association, New Delhi.

The Indian Medical Association, A.P. Branch, Hyderabad.

The Director of Medical Education, A.P., Hyderabad.

The Director of Health, A.P., Hyderabad.

The Commissioner, A.P. Vaidya Vidhana Parishad, Hyderabad.

The Commissioner, Family Welfare, A.P., Hyderabad.

Copy to;

The Director General and Inspector General of Police, A.P., Hyderabad.

The P.S. to Special Secretary to C.M.

The P.S. to M (VVP&HS).

The P.S. to M (H&FW).

The P.S. to M (ME&HI).

The P.S. to Principal Secretary to Government.

The P.S. to Ex-officio Secretary to Government.

The Home Department.

The Law (E) Department.

SF/SC.

//FORWARDED:: BY ORDER//

SECTION OFFICER